

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

RESTAURANT LAW CENTER, *et al.*,

*Plaintiffs,*

v.

U.S. DEPARTMENT OF LABOR, *et al.*,

*Defendants.*

Case No. 1:21-cv-1106 (RP)

**DEFENDANTS' RESPONSE TO  
PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY**

The Supreme Court's decision in *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), does not support Plaintiffs. The rule at issue in this case lacks the qualities that triggered the major questions doctrine in *West Virginia*. The rule here does not "substantially restructure" the market, invoke "newfound power," or rely on a "rarely used" and "ancillary provision" of law. *Id.* at 2610. Instead, it restores limitations on nontipped and directly supporting work that are "similar" to prior guidance, which invoked the same authority as the current rule and which "governed the industry for decades." *See RLC v. DOL*, 2022 WL 526243, at \*3 (Feb. 22, 2022). And Plaintiffs inflate the impact of the rule by adding its projected costs over ten years. *See ECF No. 44-1 at 2*. To be precise, the estimated average *annual* cost of the rule is \$183.6 million. 86 Fed. Reg. 60,114, (Oct. 29, 2021). That is far less costly than those rules that the Supreme Court has analyzed under the major questions doctrine. *See West Virginia*, 142 S. Ct. at 2604 (noting that EPA estimated "billions of dollars in compliance costs"); 80 Fed. Reg. 64,662, 64,679 (Oct. 23, 2015) (projecting annual compliance costs for the rule at issue in *West Virginia* to be \$1.4 to \$2.5 billion in 2020, rising to \$5.1 to 8.4 billion in 2030)); *cf. Biden v. Missouri*, 142 S. Ct. 647 (2022) (no mention of major questions doctrine in case involving estimated annual costs of \$1.38 billion); 86 Fed. Reg. 61,555, 61,602 (Nov. 4, 2021) (projecting these costs).

Dated: July 22, 2022

Respectfully submitted,

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